

**DEPARTMENT OF THE TREASURY****31 CFR Part 34**

RIN 1505-AC44

**Department of the Treasury  
Regulations for the Gulf Coast  
Restoration Trust Fund****AGENCY:** Office of the Fiscal Assistant Secretary, Treasury.**ACTION:** Final rule.**SUMMARY:** The Department of the Treasury is issuing final regulations concerning the investment and use of amounts deposited in the Gulf Coast Restoration Trust Fund, which was established in the Treasury of the United States by the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act).**DATES:** *Effective date:* February 12, 2016.**FOR FURTHER INFORMATION CONTACT:**Please send questions by electronic mail to [restoreact@treasury.gov](mailto:restoreact@treasury.gov), or contact Janet Vail at the Office of Gulf Coast Restoration at 202-622-6873.**SUPPLEMENTARY INFORMATION:****I. Background**

The RESTORE Act makes funds available for the restoration and protection of the Gulf Coast Region, and certain programs with respect to the Gulf of Mexico, through a trust fund in the Treasury of the United States, known as the Gulf Coast Restoration Trust Fund. The trust fund will contain 80 percent of the administrative and civil penalties paid after July 6, 2012 under the Federal Water Pollution Control Act in connection with the *Deepwater Horizon* oil spill. Amounts in the trust fund will be invested and made available through five components of the RESTORE Act.

The Direct Component, administered by Treasury, sets aside 35 percent of the penalties paid into the trust fund for eligible activities proposed by the State of Alabama, the State of Mississippi, the State of Texas, the State of Louisiana and 20 Louisiana parishes, and 23 Florida counties. The Comprehensive Plan Component sets aside 30 percent of the penalties, plus half of all interest earned on trust fund investments, to be managed by a new independent Federal entity called the Gulf Coast Ecosystem Restoration Council (Council). The Council includes members from six Federal agencies or departments and the five Gulf Coast States. One of the Federal members, the Secretary of Commerce, at this time serves as

Chairperson of the Council. The Council will direct those funds to projects and programs for the restoration of the Gulf Coast Region, pursuant to a comprehensive plan that is being developed by the Council. Under the Spill Impact Component, entities representing the Gulf Coast States use an additional 30 percent of penalties in the trust fund for eligible activities pursuant to State Expenditure Plans approved by the Council. The remaining five percent of penalties, plus one-half of all interest earned on trust fund investments, will be divided equally between the NOAA RESTORE Act Science Program established by the National Oceanic and Atmospheric Administration (NOAA), an operating unit of the Department of Commerce, and the Centers of Excellence Research Grants Program, administered by Treasury.

On August 15, 2014, Treasury published a comprehensive interim final rule containing procedures for implementing the RESTORE Act. Among its provisions, the procedures allocated amounts to the five components, described the activities that could be funded and the entities entitled to apply for funds, and set forth compliance requirements. Treasury accepted public comment on the comprehensive interim final rule for thirty days. Treasury published a second interim final rule on October 10, 2014, which allocated amounts to Louisiana parishes under one RESTORE Act component, called the Direct Component. Both interim final rules took effect on October 14, 2014.

**II. Public Comments and Summary of Changes From the Interim Final Rules**

Treasury received 21 unique comment letters on the comprehensive interim final rule, and no comments on the interim final rule that allocated funds to the Louisiana parishes. Several commenters repeated suggestions made on the proposed rule issued in September 2013, and opined on matters discussed in the preamble to the comprehensive interim final rule, such as the application of the National Environmental Policy Act (NEPA) to RESTORE Act grant programs.

One commenter, a state, acknowledged the benefits of providing funds through grants, but encouraged Treasury to consider using a revenue sharing arrangement. The commenter raised a concern that grant processes are an inefficient means of disbursing funds to meet the goals of the RESTORE Act. Treasury addressed this comment when it published the comprehensive interim final rule. The RESTORE Act imposes

conditions on how states use funds provided under the Act, requires Federal oversight, and authorizes Treasury to stop the flow of funds when there is noncompliance. These controls are characteristic of Federal grant programs. The controls required by Treasury's regulations and Federal laws and policies on grants hold recipients accountable to use the funds as required by the RESTORE Act. The public comments Treasury received on the proposed rule and comprehensive interim final rule overwhelmingly support the distribution of RESTORE Act funds through Federal grants. Accordingly, no change has been made in the final rule to address this comment.

Several commenters, particularly public interest groups, requested that Treasury exercise more authority over the selection of projects funded under the RESTORE Act. Some commenters asked Treasury to establish substantive criteria for evaluating project proposals, such as performance goals and preferences for certain kinds of activities. Other commenters proposed that Treasury adopt procedures, such as independent expert reviews, for evaluating synergies and potential conflicts between projects proposed under different components, or to address project proposals that may be controversial.

Treasury considered similar comments during its review of comments on the proposed rule. The Act does not impose uniform criteria for the selection of projects under the Direct Component, Comprehensive Plan Component, and Spill Impact Component, or require the coordination of projects across components. Each component has different eligibility criteria, different processes for selecting activities, and different entities responsible for selecting the activities to be funded. The final rule acknowledges these differences, while still requiring compliance with the Act and Federal laws and policies applying to grants. Under these policies, Federal awards will include an indication of the timing and scope of performance, and may include specific performance goals, indicators, milestones, and expected outcomes. The appropriate vehicle for addressing these project specific requirements is the Federal award agreement.

Beyond what the Act stipulates, Treasury cannot require the Council, NOAA, states, counties, or parishes to coordinate their selection of projects across components in order to achieve particular economic or environmental goals. Treasury encourages voluntary

efforts to coordinate work, and intends to facilitate these efforts by publishing Direct Component Multiyear Implementation Plans and other information related to the grant programs it administers.

Several public interest groups also asked Treasury to reconsider its views regarding the application of NEPA to Treasury's activities under the Direct Component and the Centers of Excellence Research Grants Program. In the preamble to the comprehensive interim final rule, we stated that "Treasury does not anticipate that its review of Multiyear Implementation Plans or the issuance of individual grants will require a NEPA review. Other Federal actions connected with activities funded through a RESTORE Act grant, such as issuance of a permit, may require NEPA review by the agency issuing the permit." 79 FR 48039, 48051 (Aug. 15, 2014).

Treasury's view is based on its limited statutory role for the administration of Direct Component grants and the Centers of Excellence Research Grants Program. The Act gives Treasury no role in project selection or design for the Direct Component. The Act specifies the activities or disciplines that are eligible for funding, and does not explicitly authorize Treasury to reject an activity or discipline, or to require funding of an alternative design, when the activity otherwise complies with the Act and other Federal law. Also, Treasury neither approves nor disapproves Multiyear Implementation Plans. Accordingly, Treasury will review Multiyear Implementation Plans and grant applications to determine whether they satisfy financial and administrative requirements in the Act and these regulations, and apply requirements in the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (OMB's Uniform Guidance), 2 CFR part 200, in its review of grant applications.

Because Treasury has a limited role in reviewing Multiyear Implementation Plans and issuing grants, Treasury does not anticipate that its actions will require an Environmental Assessment or Environmental Impact Statement under NEPA. NEPA is designed to help federal agencies consider environmental consequences in their decision-making process. When an agency action is non-discretionary under a statute, the information that a NEPA review provides would not assist the agency's decision-makers. Several commenters urged Treasury to reconsider the application of NEPA to its RESTORE Act grant programs, but no commenter

offered an analysis of the RESTORE Act or its legislative history showing where Treasury has the discretion to consider environmental consequences and project alternatives when making grants.

Treasury's limited role does not mean that NEPA will never apply to activities undertaken with funds provided through the Direct Component and Centers of Excellence Research Grants Program. As Treasury stated in the preamble to the comprehensive interim final rule, other Federal actions, such as the issuance of permits, may trigger NEPA review by the Federal regulatory agency. In addition, it is Treasury policy under Treasury Directive 75-02 to fully evaluate its actions to ensure compliance with NEPA requirements and regulations issued by the Council on Environmental Quality, where applicable. As necessary, Treasury will consider NEPA environmental documentation in the context of individual grant applications, if it is determined that Treasury has sufficient discretion to consider environmental consequences and project alternatives.

The final rule contains several technical edits, some of which were suggested by commenters. Substantive comments and changes to the comprehensive interim final rule are described below.

#### Section-by-Section Analysis

##### Section 34.2 (Definitions)

Treasury received several comments requesting a more clear definition of administrative costs. The final rule continues to define *administrative costs* as indirect costs for administration incurred by the Gulf Coast States, coastal political subdivisions, and coastal zone parishes that are allocable to activities authorized under the Act. Administrative costs do not include indirect costs that are identified specifically with, or readily assignable to, facilities. The final rule references the definition of *facilities* in OMB's Uniform Guidance at 2 CFR 200.414(a). To avoid confusion, Treasury has removed the list of activities that may result in administrative costs from the final rule.

The definition of *administrative costs* in the comprehensive interim final rule also included a statement that certain costs are direct costs. This statement was imprecise and Treasury has deleted it from the final rule. Grant applicants should look to OMB's Uniform Guidance for general information about direct and indirect costs. Questions about whether particular costs are direct or indirect costs should be addressed to the relevant Federal awarding agency.

One commenter asked Treasury to clarify the definition of *Gulf Coast Region*. The commenter contends that the geographic scope of watersheds in paragraph three of the definition is ambiguous. Treasury's comprehensive interim final rule defines the Gulf Coast Region to comprise four geographic areas:

(1) In the Gulf Coast States, the coastal zones defined under section 304 of the Coastal Zone Management Act of 1972 that border the Gulf of Mexico;

(2) Land within the coastal zones described in paragraph (1) that is held in trust by, or the use of which is by law subject solely to the discretion of, the Federal Government or officers or agents of the Federal Government;

(3) Any adjacent land, water, and watersheds, that are within 25 miles of the coastal zone described in paragraphs (1) and (2); and

(4) All Federal waters in the Gulf of Mexico.

Under paragraph 3, the Gulf Coast Region includes those parts of adjacent watersheds that extend up to, but no further than, 25 miles from the coastal zones. An activity is carried out in the Gulf Coast Region when, in the reasonable judgment of the entity applying for a grant, each severable part of the activity is primarily designed to restore or protect that geographic area. See 31 CFR 34.201–203.

##### Section 34.104 (Expenditures)

In the preamble to the comprehensive interim final rule, Treasury stated that it was deleting a sentence requiring grant recipients to minimize the time between receipt of funds and disbursement, because this requirement is addressed more completely in OMB's Uniform Guidance. A commenter noted that the sentence was not deleted from the rule. Treasury has corrected this inadvertent error in the final rule. Grant recipients with questions about the application of OMB's Uniform Guidance should direct them to the relevant Federal awarding agency.

##### Section 34.200 (General)

This section provides that a Gulf Coast State, coastal political subdivision, and coastal zone parish may use amounts available under the Direct Component and Spill Impact Component to satisfy the non-Federal cost-share of an activity that is eligible under §§ 34.201 and 34.203 and authorized by Federal law. Commenters questioned why a similar opportunity is not available for funds made available under the Comprehensive Plan Component and the Centers of Excellence Research Grants Program.

The Act does not allow Comprehensive Plan Component funds or Centers of Excellence Research Grant funds to be used for satisfying the non-Federal cost-share. Those allocations are subject to the general rule in OMB's Uniform Guidance, 2 CFR 200.306, which states that a non-Federal cost share cannot be met with funds paid by the Federal government under a Federal award.

Another commenter noted a provision in the Act stating that the use of trust fund amounts to satisfy the non-Federal share of an eligible activity "shall not affect the priority in which other Federal funds are allocated or awarded." 33 U.S.C. 1331(t)(1)(N)(ii). The commenter requested that Treasury include this provision in its regulations. Treasury currently sees no need to elaborate on this statutory provision, which does not need a regulation to be effective. If a grant recipient believes that a Federal agency has allocated or awarded funds in violation of this provision, it should raise that concern with the agency providing assistance.

#### Section 34.201 (Eligible Activities for the Direct Component)

Treasury received several comments about whether particular activities are reimbursable under the Direct Component, such as costs for grant management staff and certain pre-award and planning activity costs. Grant applicants will find detailed information about allowable costs in OMB's Uniform Guidance. In addition, grant applicants can consult information posted on Treasury's RESTORE Act Web page, or contact Treasury's Office of Gulf Coast Restoration for information about particular costs at [restoreact@treasury.gov](mailto:restoreact@treasury.gov). Other than a clarifying change to the description of planning assistance, there are no changes to this section.

#### Section 34.203 (Eligible Activities for the Spill Impact Component)

One commenter asserted that activities funded under the Spill Impact Component should focus primarily on ecosystem restoration. Treasury's rule closely tracks the statute. The Act clearly provides that funds are available under the Spill Impact Component "for projects, programs, and activities that will improve the ecosystems or economy of the Gulf Coast region," subject to certain criteria that are included in Treasury's rule. Because Treasury's rule is consistent with the Act, no change is necessary.

#### Section 34.204 (Limitations on Administrative Costs and Administrative Expenses)

One commenter, a member of the Gulf Coast Ecosystem Restoration Council, requested clarification on how state members of the Council can access amounts set aside for the Council's administrative expenses. Treasury's rule does not address this issue. The Council determines how it allocates funds for administrative expenses. Questions about how the Council allocates its funds should be directed to the Council.

In a separate notice of proposed rulemaking, Treasury plans to propose an amendment to this section to change when the 3% limitation is applied to the Council. Under the Act, the Council cannot spend more than three percent of amounts it receives from the Trust Fund on administrative expenses. The current regulation states that the three percent limit is applied to the total amount of funds received by the Council under the Comprehensive Plan Component, beginning with the first fiscal year the Council receives funds through the end of the fourth, or most recent fiscal year, whichever is later. This approach limits the amounts available for administrative expenses to a percentage of amounts drawn down from the Trust Fund in a particular year, which may vary considerably. Because the Council requires more regular and predictable funding for its administrative expenses, Treasury will propose to cap the Council's administrative expenses at three percent of amounts the Council receives under the Comprehensive Plan Component before termination of the Trust Fund. The notice of proposed rulemaking will include a forty-five day comment period. The current rule will remain in effect pending review of the public comments.

#### Section 34.302 (Allocation of Funds—Direct Component)

Treasury amended this section to add the allocations for Louisiana parishes that Treasury published as an interim final rule at 79 FR 61236 (Oct. 10, 2014). The allocations did not change.

#### Section 34.303 (Application Procedure—Direct Component)

A commenter requested clarification about Treasury's application and disbursement process. Treasury published detailed guidance and application processes and posted materials on Treasury's RESTORE Act Web page, available at <http://www.treasury.gov/services/restore-act/Pages/default.aspx>. Treasury also provided on-site training to the Gulf

Coast States, eligible Florida counties, and eligible Louisiana parishes. Applicants with questions about these matters should contact Treasury's Office of Gulf Coast Restoration at [restoreact@treasury.gov](mailto:restoreact@treasury.gov).

One commenter, a state, requested clarification about the public review and comment process required in 31 CFR 34.303(b)(8). The commenter stated that it can provide adequate opportunities for public review and comment, but cannot guarantee that the public will fully participate in this process. Treasury's rule does not require a state to ensure full participation in the public comment process. The rule is clear that a state must make its Multiyear Implementation Plan available for public review and comment "in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations. . . ." Treasury cannot describe in detail the steps that will satisfy this requirement in every case, as the steps may vary for each state, county, or parish. For example, if a large segment of the affected population does not have Internet access, or does not speak English, a state may need to employ other methods to notify the affected population of its plans and the opportunity to provide comment, such as providing reasonable access to public meetings and presentations in language other than English.

One commenter requested guidance about whether modifications to a Multiyear Implementation Plan require a public review and comment period for Multiyear Implementation Plans. In response to this comment, the final rule now requires the same public review and comment period for material changes as for an accepted Multiyear Implementation Plan. Material modifications can only be adopted after consideration of meaningful public comment. Applicants with questions about which modifications are material should contact Treasury's Office of Gulf Coast Restoration.

#### Section 34.305 (Use of Funds—Direct Component)

One commenter requested that Treasury add a sentence to § 34.305, as well as other parts of the rule, requiring a written justification for all sole source procurements and preferences given to individuals and companies. The commenter also asked that Treasury incorporate preferences for small and minority owned businesses. OMB's Uniform Guidance has an extensive discussion on the procurement requirements applying to Federal grants,

including requirements for competition and language requiring affirmative steps to benefit small and minority owned businesses. 2 CFR 200.319–200.321. The procurement requirements in OMB's Uniform Guidance apply to RESTORE Act grants. Therefore, the final rule has not been amended to address this comment.

Some commenters discussed the need for activities that improve the resiliency of communities, such as funds for workforce development and job creation. While the Act does not require states, counties, or parishes to fund these activities, workforce development and job creation are eligible activities for funding under the Direct Component and the Spill Impact Component. The Act's legislative history explains that workforce development "is intended to include non-profit, university, and community college-based workforce, career and technical training programs. This would also include the identification of projects, research, programs and partnerships with federal, state and local workforce agencies, industry and local stakeholders from economically and socially disadvantaged communities." S. Rep. No. 112–100, at 8 (2011). This list of activities, while not exclusive, describes the kinds of activities that are eligible for funding. Commenters with suggestions for specific projects should contact the states, counties, and parishes that are developing Multiyear Implementation Plans and Spill Impact State Expenditure Plans.

During implementation of the comprehensive interim final rule, Treasury received questions about the availability of funds for county and local parks. One eligible activity under the Direct Component and Spill Impact Component is "Improvements to or on State parks located in coastal areas affected by the Deepwater Horizon oil spill." 33 U.S.C. 1321(t)(1)(B)(i)(V). Treasury does not interpret this provision to apply to county and local parks. However, improvements to county and local parks, such as activities that restore and protect natural resources under 33 U.S.C. 1321(t)(1)(B)(i)(I), may fall under other eligible activities.

#### Section 34.404 (Comprehensive Plan Component)

Treasury has made a clarifying change to this section to indicate that assignees must submit reports as prescribed by the Council or Treasury, and the Council must submit reports as prescribed by Treasury.

#### Section 34.405 (Recordkeeping—Comprehensive Plan Component)

Treasury has made a clarifying change to this section to add that the Council must make its records concerning the activities of assignees available to Treasury, including the Treasury Inspector General. This provision will assist Treasury in gathering the information it needs to carry out its supplemental compliance functions under 31 CFR 34.804.

#### Section 34.503 (State Expenditure Plans—Spill Impact Component)

A commenter requested clarification about the public review and comment processes for State Expenditure Plans described in § 34.503(g). The commenter, who submitted a similar comment on § 34.303, is concerned that a state cannot ensure that the public will fully participate in the public review and comment process. As described above, states are not expected to guarantee full public participation in the public review and comment process. Treasury's rule is clear that states must use methods "calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations." Treasury cannot describe in detail the methods that will satisfy this requirement in every case, as they may depend on the state and the impacted region or population.

Another commenter asked Treasury to clarify the public review and comment requirements that apply to modifications of a State Expenditure Plan. The final rule now states that material modifications are subject to the same public review and comment requirements, as well as other requirements, that apply to the original plan. States with questions about which modifications are material should contact the Council for guidance.

#### Section 34.506 (Reports—Spill Impact Component)

Treasury has made a clarifying change to this section to indicate that the Council must submit reports as prescribed by Treasury, in order to assist Treasury in fulfilling its supplemental compliance functions under 31 CFR 34.804.

#### Section 34.507 (Recordkeeping—Spill Impact Component)

Consistent with changes made to section 34.405, Treasury has amended this section to add that the Council must make available its records concerning the activities of recipients to Treasury, including the Treasury Inspector General.

#### Section 34.703 (Application Procedure—Centers of Excellence Research Grants Program)

One state commenter asked Treasury to clarify that each state will receive its full allocation provided by the Act. Treasury's regulations are already clear that each state will receive an equal share of amounts made available under the Centers of Excellence Research Grants Program. To receive its share, each state will apply to Treasury for a grant and specify how the funds will be used, a standard requirement for all Federal grants. Requiring states to identify how they will use Federal funds is necessary to assist the Federal awarding agency in performing oversight, one of the grant management responsibilities described in OMB's Uniform Guidance.

During implementation of the comprehensive interim final rule, Treasury received questions about the public notice requirements applying to the rules and policies for the Centers of Excellence Research Grants Program. Treasury's regulation requires each state to describe the rules and policies for grants it will issue to subrecipients. Each state also must demonstrate the rules and policies that became effective after publication of the comprehensive interim final rule were available for public review and comment for a minimum of 45 days. Many states have longstanding rules and policies that generally apply to grant programs, including competitive project selection and conflict of interest policies. Treasury's regulation does not require states to seek public comment on rules and policies that were effective prior to publication of the comprehensive interim final rule.

#### Section 34.802—(Certifications)

One commenter, a state, noted that the certification in § 34.802(c) appears to require that each activity be selected after consideration of comments from a diverse cross-section of the public. The commenter stated that it can provide opportunities for public review and comment, but it cannot guarantee that all segments of the public will participate. Treasury agrees with this comment, and has amended the certification to be consistent with requirements in §§ 34.303(b)(8) and 34.503(g). The amended certification requires grant recipients to certify that each activity is part of a plan that was made available for public review and comment in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and nonprofit organizations, and that

the activity was selected after consideration of meaningful input from the public, as described in the recipient's grant application.

Treasury has also amended the certification at § 34.803(a) to conform more closely to the language of the statute, and to make clear that the certification can apply to planning activities as well as activities that carry out the restoration or protection of the Gulf Coast Region.

#### Section 34.803 (Conditions)

In the preamble to the comprehensive interim final rule, Treasury stated that grants must conform to the requirements in OMB's Uniform Guidance and other Federal laws and policies on grants. These requirements include reports on how grants funds were used. To avoid any inconsistency between these requirements and the reporting requirements in § 34.803(e), Treasury is deleting certain details that were listed in the comprehensive interim final rule.

#### Section 34.804 (Noncompliance)

Two commenters suggested that Treasury impose penalties on Council members that violate the Act or Treasury regulations. Because the Act does not authorize Treasury to impose penalties, the final rule does not adopt this suggestion.

### III. Procedural Requirements

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. In the preamble to the comprehensive interim final rule, Treasury certified that the rule will not have a significant economic impact on a substantial number of small entities. Small entities will incur costs to develop the plans and projects described in the rule, but these costs arise from requirements in the RESTORE Act and not Treasury regulations. Treasury did not receive any comments in response to the comprehensive interim rule on the impact to small entities and there are no changes in the final rule that warrant a change in this certification. Accordingly, Treasury certifies that the final rule will not have a significant impact on a substantial number of small

entities, and no regulatory flexibility analysis is required.

#### B. Paperwork Reduction Act

The collections of information contained in the comprehensive interim final rule were submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and approved under control number 1505–0250. The final rule does not contain any new collections of information. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

#### C. Regulatory Planning and Review (Executive Orders 12866 and 13563)

The rule affects those entities in the five Gulf Coast States that are eligible to receive funding under the RESTORE Act, and is focused on the environmental restoration and economic recovery of the Gulf Coast Region in the aftermath of the *Deepwater Horizon* oil spill. The amounts made available from the trust fund will continue efforts that provide for the long-term health of the ecosystems and economy of this region. In accordance with Executive Order 12866, as supplemented by Executive Order 13563, OMB has reviewed this regulation. This rule finalizes without significant change a comprehensive interim final rule published on August 15, 2014 that was designated as economically significant for purposes of Executive Order 12866. The Department adopts without revision the regulatory impact assessment published with the comprehensive interim final rule at 79 FR 48052 because this final rule does not adopt changes that require updates in the analysis. In accordance with Executive Order 12866, as supplemented by Executive Order 13563, this rule is designated as significant and OMB has reviewed this regulation.

#### D. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a "major rule" as defined by 5 U.S.C. 804(2) and will become effective 60 days after publication.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Act of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Treasury believes that the regulatory impact assessment referenced in this preamble provides the analysis required by the Unfunded Mandates Act.

#### List of Subjects in 31 CFR Part 34

Coastal zone, Fisheries, Grant programs, Grants administration, Intergovernmental relations, Marine resources, Natural resources, Oil pollution, Research, Science and technology, Trusts and trustees, Wildlife.

For the reasons set forth in the preamble, the Department of the Treasury amends 31 CFR subtitle A by revising part 34 to read as follows:

### PART 34—RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES

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- 34.700 General.  
 34.701 Responsibility for administration—Centers of Excellence Research Grants Program.  
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- 34.708 Audits—Centers of Excellence Research Grants Program.

**Subpart I—Agreements**

- 34.800 General.  
 34.801 Grant agreements.  
 34.802 Certifications.  
 34.803 Conditions.  
 34.804 Noncompliance.  
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**Authority:** 31 U.S.C. 301; 31 U.S.C. 321; 33 U.S.C. 1251 *et seq.*

**Subpart A—General Provisions**

**§ 34.1 Purpose.**

This part describes policies and procedures applicable to the following programs authorized under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act).

(a) The Gulf RESTORE Program is authorized under section 311(t) of the Federal Water Pollution Control Act (33 U.S.C. 1321(t)), as amended by the RESTORE Act, and includes the following components:

(1) Direct Component (subpart D of this part), administered by the Department of the Treasury.  
 (2) Comprehensive Plan Component (subpart E of this part), administered by the Gulf Coast Ecosystem Restoration Council.

(3) Spill Impact Component (subpart F of this part), administered by the Gulf Coast Ecosystem Restoration Council.

(b) NOAA RESTORE Act Science Program (subpart G of this part) is administered by the National Oceanic and Atmospheric Administration, and authorized by the RESTORE Act, section 1604, 33 U.S.C. 1321 note.

(c) Centers of Excellence Research Grants Program (subpart H of this part) is administered by the Department of the Treasury, and authorized by the RESTORE Act, section 1605, 33 U.S.C. 1321 note.

**§ 34.2 Definitions.**

As used in this part:

*Act* or *RESTORE Act* means the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

*Activity* means an activity, project, or program, including research and monitoring, eligible for funding under the Act.

*Administrative costs* means those indirect costs for administration incurred by the Gulf Coast States, coastal political subdivisions, and coastal zone parishes that are allocable to activities authorized under the Act.

Administrative costs do not include indirect costs that are identified specifically with, or readily assignable to, facilities as defined in 2 CFR 200.414.

*Administrative expenses* means those expenses incurred for administration by the Council or NOAA, including expenses for general management functions, general ledger accounting, budgeting, human resource services, general procurement services, and general legal services. Administrative expenses do not include expenses that are identified specifically with, or readily assignable to:

- (1) Facilities;
- (2) Eligible projects, programs, or planning activities;
- (3) Activities related to grant applications, awards, audit requirements, or post-award management, including payments and collections;
- (4) The Council's development, publication, and implementation of the Comprehensive Plan and any subsequent amendments;
- (5) The Council's development and publication of regulations and procedures for implementing the Spill Impact Component, and the review of State Expenditure Plans submitted under the Spill Impact Component;
- (6) Preparation of reports required by the Act;
- (7) Establishment and operation of advisory committees; or
- (8) Collection and consideration of scientific and other research associated with restoration of the Gulf Coast ecosystem.

*Alabama Gulf Coast Recovery Council* means the entity identified in section 311(t)(1)(F)(i) of the Federal Water Pollution Control Act, as amended by the RESTORE Act.

*Assignee* means a member of the Gulf Coast Ecosystem Restoration Council who has been assigned primary authority and responsibility for a project or program included in the Comprehensive Plan through a grant or interagency agreement.

*Best available science* means science that maximizes the quality, objectivity, and integrity of information, including statistical information; uses peer-reviewed and publicly available data; and clearly documents and communicates risks and uncertainties in the scientific basis for such projects.

*Centers of Excellence Research Grants Program* means the program authorized by section 1605 of the Act.

*Coastal political subdivision* means any local political jurisdiction that is immediately below the state level of government, including a county, parish,

or borough, with a coastline that is contiguous with any portion of the United States Gulf of Mexico. The term includes any of the disproportionately affected counties and nondisproportionately impacted counties in Florida, as defined below.

*Coastal zone parishes* means the parishes of Ascension, Assumption, Calcasieu, Cameron, Iberia, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, and Vermilion in the State of Louisiana.

*Comprehensive Plan Component* means the component of the Gulf RESTORE Program authorized by section 311(t)(2) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which funds are provided through the Council, in accordance with a plan developed by the Council, to entities to carry out the purposes of the Act.

*Council* means the Gulf Coast Ecosystem Restoration Council, an independent entity in the Federal Government whose members are the Governors of the Gulf Coast States; the Secretaries of Agriculture, the Army, Commerce, and the Interior; the head of the department in which the Coast Guard is operating, and the Administrator of the Environmental Protection Agency (or their designees at the level of Assistant Secretary or the equivalent).

*Deepwater Horizon oil spill* means the blowout and explosion of the mobile offshore drilling unit *Deepwater Horizon* that occurred on April 20, 2010, and resulting hydrocarbon releases into the environment.

*Direct Component* means the component of the Gulf RESTORE Program authorized by section 311(t)(1) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which Gulf Coast States, coastal zone parishes, disproportionately affected counties, and nondisproportionately impacted counties are provided funds directly by Treasury through grants to carry out the purposes of the Act.

*Disproportionately affected counties* means the counties of Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Wakulla, and Walton in the State of Florida.

*Federal Water Pollution Control Act* means 33 U.S.C. 1251 *et seq.*

*Gulf Coast Region* means:

(1) In the Gulf Coast States, the coastal zones defined under section 304 of the Coastal Zone Management Act of 1972 that border the Gulf of Mexico;

(2) Land within the coastal zones described in paragraph (1) of this definition that is held in trust by, or the use of which is by law subject solely to the discretion of, the Federal Government or officers or agents of the Federal Government;

(3) Any adjacent land, water, and watersheds, that are within 25 miles of the coastal zone described in paragraphs (1) and (2) of this definition; and

(4) All Federal waters in the Gulf of Mexico.

*Gulf Coast State* means any of the States of Alabama, Florida, Louisiana, Mississippi, and Texas.

*Gulf Coast State entity* means a party that carries out the duties of a state for the Centers of Excellence Research Grants Program under § 34.702.

*Infrastructure* means the public facilities or systems needed to support commerce and economic development. These installations and facilities span a wide range, including highways, airports, roads, buildings, transit systems, port facilities, railways, telecommunications, water and sewer systems, public electric and gas utilities, levees, seawalls, breakwaters, major pumping stations, and flood gates. Infrastructure encompasses new construction, upgrades and repairs to existing facilities or systems, and associated land acquisition and planning.

*Multiyear Implementation Plan* means the plan submitted by entities eligible for funding directly from Treasury under the Direct Component, and described at § 34.303.

*NOAA* means the National Oceanic and Atmospheric Administration.

*NOAA RESTORE Act Science Program* means the program authorized by section 1604 of the Act.

*Nondisproportionately impacted counties* means the counties of Charlotte, Citrus, Collier, Dixie, Hernando, Hillsborough, Jefferson, Lee, Levy, Manatee, Monroe, Pasco, Pinellas, Sarasota, and Taylor in the State of Florida.

*Pass-through entity* means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a program under the Act.

*Planning assistance* means data gathering, studies, modeling, analysis and other tasks required to prepare plans for eligible activities under § 34.201(a) through (i), including environmental review and compliance tasks and architectural and engineering studies. Planning assistance also means one-time preparations that will allow the recipient to establish systems and processes needed to review grant applications, award grants, monitor

grants after award, and audit compliance with respect to eligible activities under § 34.201 in a Multiyear Implementation Plan or State Expenditure Plan.

*Recipient* means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under the Act. As used in these regulations, a recipient also includes a pass-through entity. The term recipient does not include subrecipients.

*Spill Impact Component* means the component of the Gulf RESTORE Program authorized by section 311(t)(3) of the Federal Water Pollution Control Act, as added by section 1603 of the Act, in which Gulf Coast States are provided funds by the Council according to a formula that the Council establishes by regulation, using criteria listed in the Act.

*State Expenditure Plan* means the plan that each Gulf Coast State must submit to the Council for the expenditure of amounts disbursed under the Spill Impact Component, and described at § 34.503.

*Subrecipient* means a non-Federal entity that receives a subaward from a recipient to carry out an activity under the Act.

*Treasury* means the U.S. Department of the Treasury, the Secretary of the Treasury, or his/her designee.

*Trust Fund* means the Gulf Coast Restoration Trust Fund.

## Subpart B—Trust Fund

### § 34.100 The Trust Fund.

Treasury will deposit into the Trust Fund an amount equal to 80 percent of all administrative and civil penalties paid after July 6, 2012 by responsible parties in connection with the explosion on, and sinking of, the mobile offshore drilling unit *Deepwater Horizon* pursuant to a court order, negotiated settlement, or other instrument under section 311 of the Federal Water Pollution Control Act. After these administrative and civil penalties have been deposited into the Trust Fund, the Trust Fund will terminate on the date all amounts owed to the Trust Fund have been returned to the Trust Fund, and all amounts in the Trust Fund have been expended.

### § 34.101 Investments.

The Secretary of the Treasury will invest such amounts in the Trust Fund that are not, in the judgment of the Secretary, required to meet needs for current withdrawals. The Secretary may invest in interest-bearing obligations of the United States, having maturities

suitable to the needs of the Trust Fund as determined by the Secretary. These obligations will bear interest at rates described in 31 U.S.C. 9702, unless the Secretary determines that such rates are unavailable for obligations with suitable maturities. In that event, the Secretary will select obligations of the United States bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

#### **§ 34.102 Interest earned.**

Interest earned on Trust Fund investments will be available as described in § 34.103(b).

#### **§ 34.103 Allocation of funds.**

The amounts in the Trust Fund are allocated among the programs in § 34.1.

(a) Available funds in the Trust Fund, other than interest, are allocated as follows:

(1) Thirty-five percent in equal shares for the Gulf Coast States to be used for the Direct Component of the Gulf RESTORE Program. Section 34.302 describes the allocation for each Gulf Coast State.

(2) Thirty percent for the Council to be used for the Comprehensive Plan Component of the Gulf RESTORE Program.

(3) Thirty percent for formula distribution to Gulf Coast States to be used for the Spill Impact Component of the Gulf RESTORE Program.

(4) Two and one-half percent to be used for the NOAA RESTORE Act Science Program.

(5) Two and one-half percent in equal shares for the Gulf Coast States to be used for the Centers of Excellence Research Grants Program.

(b) Within ten days of the close of a Federal fiscal year, available funds equal to the interest earned on the Trust Fund investments will be allocated, as follows:

(1) Twenty-five percent to be used for the NOAA RESTORE Act Science Program.

(2) Twenty-five percent for the Centers of Excellence Research Grants Program.

(3) Fifty percent for the Comprehensive Plan Component of the Gulf RESTORE Program.

#### **§ 34.104 Expenditures.**

Subject to limitations in the Act and these regulations, amounts in the Trust Fund will be available for the direct and indirect expenses of eligible activities without fiscal year limitation.

#### **§ 34.105 Waiver.**

To the extent not inconsistent with applicable law, Treasury may waive or modify a requirement in the regulations in this part in a single case or class of cases if the Secretary determines, in his or her sole discretion, that the requirement is not necessary for the deposit of amounts into, or the expenditure of amounts from, the Trust Fund. Treasury will provide public notice of any waivers or modifications granted that materially change a regulatory requirement.

### **Subpart C—Eligible Activities for the Section 311(t) Gulf RESTORE Program Components**

#### **§ 34.200 General.**

This subpart describes policies and procedures regarding eligible activities applicable to the Direct Component, Comprehensive Plan Component, and Spill Impact Component of the Gulf RESTORE Program. Subparts D, E, F, and I of this part describe additional requirements that must be met before an activity can receive funding.

(a) Trust Fund amounts may be used to carry out an activity in whole or in part only if the following requirements are met:

(1) Costs must comply with administrative requirements and cost principles in applicable Federal laws and policies on grants.

(2) The activity must meet the eligibility requirements of the Gulf RESTORE Program as defined in § 34.201, § 34.202, or § 34.203, according to component.

(3) Activities funded through the Direct Component, Comprehensive Plan Component, and Spill Impact Component must not be included in any claim for compensation presented after July 6, 2012, to the Oil Spill Liability Trust Fund authorized by 26 U.S.C. 9509.

(b) A Gulf Coast State, coastal political subdivision, and coastal zone parish may use funds available under the Direct Component or Spill Impact Component to satisfy the non-Federal cost-share of an activity that is eligible under §§ 34.201 and 34.203 and authorized by Federal law.

#### **§ 34.201 Eligible activities for the Direct Component.**

The following activities are eligible for funding under the Direct Component. Activities in paragraphs (a) through (g) of this section are eligible for funding to the extent they are carried out in the Gulf Coast Region. Direct Component activities are carried out in the Gulf Coast Region when, in the

reasonable judgment of the entity applying to Treasury for a grant, each severable part of the activity is primarily designed to restore or protect that geographic area. Applicants must demonstrate that the activity will be carried out in the Gulf Coast Region when they apply for a grant. Activities designed to protect or restore natural resources must be based on the best available science. All Direct Component activities must be included in and conform to the description in the Multiyear Implementation Plan required by § 34.303.

(a) Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region.

(b) Mitigation of damage to fish, wildlife, and natural resources.

(c) Implementation of a Federally-approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring.

(d) Workforce development and job creation.

(e) Improvements to or on state parks located in coastal areas affected by the *Deepwater Horizon* oil spill.

(f) Infrastructure projects benefitting the economy or ecological resources, including port infrastructure.

(g) Coastal flood protection and related infrastructure.

(h) Promotion of tourism in the Gulf Coast Region, including promotion of recreational fishing.

(i) Promotion of the consumption of seafood harvested from the Gulf Coast Region.

(j) Planning assistance. Eligible entities under § 34.302 may apply for planning assistance grants to fund preparation and amendment of the Multiyear Implementation Plan.

(k) Administrative costs.

#### **§ 34.202 Eligible activities for the Comprehensive Plan Component.**

The Council may expend funds that are available under the Comprehensive Plan Component for eligible activities under 33 U.S.C. 1321(t)(2) and (3), including the following:

(a) The Council may expend funds to carry out activities in the Gulf Coast Region that are included in the Comprehensive Plan, as described in 33 U.S.C. 1321(t)(2). An activity selected by the Council is carried out in the Gulf Coast Region when, in the reasonable judgment of the Council, each severable part of the activity is primarily designed to restore or protect that geographic area. The Council must document the basis for its judgment when it selects the activity.



(b) The Council may expend funds to develop and publish the proposed and initial Comprehensive Plans, and to implement, amend, and update the Comprehensive Plan as required by the Act or as necessary.

(c) The Council may expend funds to prepare annual reports to Congress, and other reports and audits required by the Act, these regulations, and other Federal law.

(d) The Council may expend funds to establish and operate one or more advisory committees as may be necessary to assist the Council.

(e) The Council may expend funds to collect and consider scientific and other research associated with restoration of the Gulf Coast ecosystem, including research, observation, and monitoring.

(f) Administrative expenses.

#### **§ 34.203 Eligible activities for the Spill Impact Component.**

Activities eligible for funding under the Spill Impact Component must meet the eligibility criteria in § 34.201(a) through (k), as well as the following:

(a) The activities must be included in and conform to the description in a State Expenditure Plan required in § 34.503 and approved by the Council. State entities may apply for a grant from the total amount allocated to that state under the Spill Impact Component before the Council has approved the State Expenditure Plan to fund eligible activities that are necessary to develop and submit that plan.

(b) The activities included in the State Expenditure Plan must contribute to the overall economic and ecological recovery of the Gulf Coast.

(c) Activities listed in § 34.201(a) through (g) are eligible for funding from the Spill Impact Component to the extent they are carried out in the Gulf Coast Region. For purposes of this component, an activity is carried out in the Gulf Coast Region when, in the reasonable judgment of the entity developing the State Expenditure Plan under § 34.503, each severable part of the activity is primarily designed to restore or protect that geographic area. State Expenditure Plans must include a demonstration that activities in the plan will be carried out in the Gulf Coast Region.

#### **§ 34.204 Limitations on administrative costs and administrative expenses.**

(a) Of the amounts received by a Gulf Coast State, coastal political subdivision, or coastal zone parish in a grant from Treasury under the Direct Component, or in a grant from the Council under the Comprehensive Plan Component or Spill Impact Component,

not more than three percent may be used for administrative costs. The three percent limit is applied to the total amount of funds received by a recipient under each grant. The three percent limit does not apply to the administrative costs of subrecipients. All subrecipient costs are subject to the cost principles in Federal laws and policies on grants.

(b) Of the amounts received by the Council under the Comprehensive Plan Component, not more than three percent may be used for administrative expenses. The three percent limit is applied to the total amount of funds received by the Council, beginning with the first fiscal year the Council receives funds through the end of the fourth, or most recent fiscal year, whichever is later.

#### **§ 34.205 Council's audited financial statements and audits.**

(a) Not later than December 1, 2014, and each year thereafter, the Council must prepare and submit to the Secretary of the Treasury an audited financial statement for the preceding Federal fiscal year, covering all accounts and associated activities of the Council.

(b) Each audited financial statement under this section must reflect:

(1) The overall financial position of the accounts and activities covered by the statement, including assets and liabilities thereof.

(2) Results of operations of the Council.

(c) The financial statements must be prepared in accordance with the form and content of the financial statements prescribed by the Director of the Office of Management and Budget for executive agencies pursuant to 31 U.S.C. 3515, consistent with applicable accounting and financial reporting principles, standards, and requirements.

(d) The Treasury Inspector General may conduct audits and reviews of the Council's accounts and activities as the Inspector General deems appropriate.

#### **Subpart D—Gulf RESTORE Program—Direct Component**

##### **§ 34.300 General.**

This subpart describes the policies and procedures applicable to the Direct Component of the Gulf RESTORE Program. The funds made available under this subpart will be in the form of a grant.

##### **§ 34.301 Responsibility for administration—Direct Component.**

Treasury is responsible for awarding and administering grants and grant agreements under this subpart. Treasury will develop and apply policies and

procedures consistent with the Act and Federal laws and policies on grants. Treasury also will establish and implement a program to monitor compliance with its grant agreements.

##### **§ 34.302 Allocation of funds—Direct Component.**

The amounts made available in any fiscal year from the Trust Fund and allocated to this component will be available in equal shares for the Gulf Coast States for expenditure on eligible activities. The following entities are eligible to receive Direct Component grants.

(a) The amounts available to Alabama will be provided directly to the Alabama Gulf Coast Recovery Council, or such administrative agent as it may designate. All administrative duties of the Alabama Gulf Coast Recovery Council must be performed by public officials and employees that are subject to the ethics laws of the State of Alabama.

(b) Of the amounts available to Florida, 75 percent of funding will be provided directly to the eight disproportionately affected counties. Each disproportionately affected county's share is as follows: Bay County, 15.101453044%; Escambia County, 25.334760043%; Franklin County, 8.441253238%; Gulf County, 6.743202296%; Okaloosa County, 15.226456794%; Santa Rosa County, 10.497314919%; Wakulla County, 4.943148294%; and Walton County, 13.712411372%.

(c) Of the amounts available to Florida, 25 percent of funding will be provided directly to the nondisproportionately impacted counties. Each nondisproportionately impacted county's share is as follows: Charlotte County, 5.162%; Citrus County, 4.692%; Collier County, 7.019%; Dixie County, 3.484%; Hernando County, 4.982%; Hillsborough County, 13.339%; Jefferson County, 3.834%; Lee County, 8.776%; Levy County, 3.894%; Manatee County, 6.809%; Monroe County, 8.297%; Pasco County, 7.079%; Pinellas County, 11.002%; Sarasota County, 7.248%; and Taylor County, 4.383%.

(d) Of the amounts available to Louisiana, 70 percent will be provided directly to the Coastal Protection and Restoration Authority Board of Louisiana, through the Coastal Protection and Restoration Authority of Louisiana.

(e) Of the amounts available to Louisiana, 30 percent will be provided directly to the coastal zone parishes. Each coastal zone parish's share is as follows: Ascension, 2.42612%; Assumption, 0.93028%; Calcasieu,

5.07063%; Cameron, 2.10096%; Iberia, 2.55018%; Jefferson, 11.95309%; Lafourche, 7.86746%; Livingston, 3.32725%; Orleans, 7.12875%; Plaquemines, 17.99998%; St. Bernard, 9.66743%; St. Charles, 1.35717%; St. James, 0.75600%; St. John the Baptist, 1.11915%; St. Martin, 2.06890%; St. Mary, 1.80223%; St. Tammany, 5.53058%; Tangipahoa, 3.40337%; Terrebonne, 9.91281%; and Vermilion, 3.02766%.

(f) No parish will receive funds until the parish chief executive has certified to the Governor of Louisiana, in a form satisfactory to the Governor or the Governor's designee, that the parish has completed a comprehensive land use plan that is consistent with, or complementary to, the most recent version of the state's Coastal Master Plan approved by the Louisiana legislature.

(g) The amounts available to Mississippi will be provided directly to the Mississippi Department of Environmental Quality.

(h) The amounts available to Texas will be provided directly to the Office of the Governor or to an appointee of the Office of the Governor.

#### **§ 34.303 Application procedure—Direct Component.**

The entities identified in § 34.302 are eligible to apply for their allocation as a grant. Treasury has developed an application process for grants available under this subpart that is consistent with the Act and Federal laws and policies on grants. The application process includes the following requirements:

(a) Before an eligible entity may receive a Direct Component activity grant, the grant applicant must submit a Multiyear Implementation Plan describing each activity for which it seeks funding under the Direct Component. Applications to fund preparation and amendment of the Multiyear Implementation Plan are exempt from this requirement.

(b) For each activity, the Multiyear Implementation Plan must include a narrative description demonstrating:

- (1) The need for, purpose, and objectives of the activity;
- (2) How the activity is eligible for funding and meets all requirements;
- (3) Location of the activity;
- (4) Budget for the activity;
- (5) Milestones for the activity;
- (6) Projected completion dates for the activity;

(7) Criteria the applicant will use to evaluate the success of each activity in helping to restore and protect the Gulf Coast Region impacted by the *Deepwater Horizon* oil spill;

(8) The plan was made available for public review and comment for a minimum of 45 days in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations; and

(9) Each activity in the plan was approved after consideration of meaningful input from the public. Treasury may require a standard format and additional information in the plans. Plans can be phased and incremental and may be modified later by the applicant. If the applicant has requested or anticipates requesting funding for any part of the activity from other sources, including other components in the Act, the applicant must identify the source, state the amount of funding, and provide the current status of the request. For the State of Louisiana parishes, the applicant must submit information demonstrating compliance with § 34.302(f).

(c) Material modifications to a Multiyear Implementation Plan are subject to all applicable requirements in paragraph (b) of this section.

(d) The applicant must include supporting information in each grant application that:

(1) Proposed activities meet the statutory requirements for eligibility; and

(2) Each activity designed to protect or restore natural resources is based on best available science.

(e) An applicant may satisfy some or all of the requirements in this section and § 34.802(a) through (e) if it can demonstrate in its application to Treasury that before July 6, 2012:

(1) The applicant established conditions to carry out activities that are substantively the same as the requirements in this section and § 34.802(a) through (e).

(2) The applicable activity qualified as one or more of the eligible activities in § 34.201.

#### **§ 34.304 Grant award process—Direct Component.**

Upon determining that the Multiyear Implementation Plan and the grant application meet the requirements of these regulations and the Act, Treasury will execute a grant agreement with the recipient that complies with subpart I of this part, the Act, and other Federal laws and policies on grants.

#### **§ 34.305 Use of funds—Direct Component.**

(a) An activity may be funded in whole or in part if the applicable requirements of subparts C and D of this part are met.

(b) When awarding contracts to carry out an activity under the Direct

Component, a Gulf Coast State, coastal political subdivision, or coastal zone parish may give preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in the state of project execution consistent with Federal laws and policies on grants.

(c) A Gulf Coast State, coastal political subdivision, or coastal zone parish may propose to issue subawards for eligible activities. Recipients that propose to issue subawards must demonstrate their ability to conduct subrecipient monitoring and management, as required by Federal laws and policies on grants.

#### **§ 34.306 Reports—Direct Component.**

Recipients must submit reports as prescribed by Treasury.

#### **§ 34.307 Recordkeeping—Direct Component.**

Recipients must maintain records as prescribed by Treasury, and make the records available to Treasury, including the Treasury Inspector General.

#### **§ 34.308 Audits—Direct Component.**

Treasury, including the Treasury Inspector General, may conduct audits and reviews of recipient's accounts and activities relating to the Act as deemed appropriate by Treasury.

### **Subpart E—Gulf RESTORE Program—Comprehensive Plan Component**

#### **§ 34.400 General.**

This subpart describes the policies and procedures applicable to the Comprehensive Plan Component. The Comprehensive Plan is developed by the Council in accordance with 33 U.S.C. 1321(t)(2) and will include activities the Council intends to carry out, subject to available funding. When selecting activities to carry out in the first three years, except for certain projects and programs that were authorized prior to July 6, 2012, the Council will give highest priority to projects meeting one or more of the criteria in 33 U.S.C. 1321(t)(2)(D)(iii).

#### **§ 34.401 Responsibility for administration—Comprehensive Plan Component.**

(a) After selecting Comprehensive Plan projects and programs to be funded, the Council must assign primary authority and responsibility for overseeing and implementing projects and programs to a Gulf Coast State or Federal agency represented on the Council, which are called *assignees* in these regulations. In assigning responsibility, the Council must enter

into a grant agreement with the Gulf Coast State or an interagency agreement with the Federal agency. Any grant agreement must be consistent with applicable Federal laws and policies on grants. The Council must specify whether any part of an assignee's responsibility may be further assigned to another entity and under what terms.

(b) When an assignee's grant or subaward to, or cooperative agreement with, a nongovernmental entity would equal or exceed ten percent of the total amount provided to the assignee for that activity, the Council must publish in the **Federal Register** and deliver to the following Congressional Committees at least 30 days prior to the assignee entering into an agreement the name of the recipient or subrecipient; a brief description of the activity, including its purpose; and the amount of the award.

(1) House of Representatives committees: Committee on Science, Space, and Technology; Committee on Natural Resources; Committee on Transportation and Infrastructure; Committee on Appropriations.

(2) Senate committees: Committee on Environment and Public Works; Committee on Commerce, Science, and Transportation; Committee on Energy and Natural Resources; Committee on Appropriations.

(c) The Council must establish and implement a program to monitor compliance with its grant agreements and interagency agreements.

#### **§ 34.402 Grant administration—Comprehensive Plan Component.**

The Council must publish policies and procedures for administration of Comprehensive Plan Component grants that are consistent with applicable Federal laws and policies on grants. These grant policies and procedures must include uniform guidelines for assignees to use when selecting subrecipients, awarding grants and subawards, and monitoring compliance. The Council must also establish and implement a program to monitor compliance with its grant agreements.

#### **§ 34.403 Use of funds—Comprehensive Plan Component.**

An activity may be funded in whole or in part if the applicable requirements of subparts C and E of this part are met.

#### **§ 34.404 Reports—Comprehensive Plan Component.**

Assignees must submit reports as prescribed by the Council or Treasury. In addition, the Council must submit reports as prescribed by Treasury.

#### **§ 34.405 Recordkeeping—Comprehensive Plan Component.**

Assignees must maintain records as prescribed by the Council and Treasury, and make the records available to the Council and Treasury, including the Treasury Inspector General. In addition, the Council must make its records concerning the activities of assignees available to Treasury, including the Treasury Inspector General.

#### **§ 34.406 Audits—Comprehensive Plan Component.**

The Council and Treasury, including the Treasury Inspector General, may conduct audits and reviews of assignee's accounts and activities relating to the Act as any of them deems appropriate.

### **Subpart F—Gulf RESTORE Program—Spill Impact Component**

#### **§ 34.500 General.**

This subpart describes the policies and procedures applicable to the Spill Impact Component of the Gulf RESTORE Program. The funds made available under this subpart will be in the form of grants.

#### **§ 34.501 Responsibility for administration—Spill Impact Component.**

The Council is responsible for awarding and administering grants under this subpart.

#### **§ 34.502 Allocation of funds—Spill Impact Component.**

The Council will allocate amounts to the Gulf Coast States based on the Act and regulations promulgated by the Council. The Council will make allocated funds available through grants for activities described in a State Expenditure Plan approved by the Council.

#### **§ 34.503 State Expenditure Plans—Spill Impact Component.**

Each Gulf Coast State, through its Governor or the Governor's designee, must submit a State Expenditure Plan to the Council for its approval that describes each activity for which the state seeks funding. The Council must develop requirements for these plans, including the requirements below.

(a) The State Expenditure Plan must be developed by:

(1) In Alabama, the Alabama Gulf Coast Recovery Council.

(2) In Florida, a consortium of local political subdivisions that includes, at a minimum, one representative of each county affected by the *Deepwater Horizon* oil spill.

(3) In Louisiana, the Coastal Protection and Restoration Authority of Louisiana, as approved by the Board.

(4) In Mississippi, the Office of the Governor or an appointee of the Office of the Governor.

(5) In Texas, the Office of the Governor or an appointee of the Office of the Governor.

(b) The State Expenditure Plan must describe how it takes into consideration the Comprehensive Plan and is consistent with the goals and objectives of the Comprehensive Plan. In addition, the State Expenditure Plan must describe the processes used:

(1) To evaluate and select activities included in the plan;

(2) To assess the capability of third party entities that will implement activities in the plan;

(3) To prevent conflicts of interest in the development and implementation of the plan;

(4) To obtain public review and comment in accordance with paragraph (g) of this section; and

(5) To verify compliance with the requirements of § 34.203 and this subpart.

(c) For each activity in the State Expenditure Plan, the plan must include a narrative description demonstrating:

(1) The need for, purpose, and objectives of the activity;

(2) How the activity is eligible for funding and meets all requirements of § 34.203 and this subpart;

(3) Location of the activity;

(4) Budget for the activity;

(5) Milestones for the activity;

(6) Projected completion dates for the activity; and

(7) Criteria the applicant will use to evaluate the success of each activity in helping to restore and protect the Gulf Coast Region. Plans can be phased or incremental and may be modified with the Council's approval. If funding has been requested from other sources, including other components of the Act, the plan must identify the source, state how much funding was requested, and provide the current status of the request.

(d) The State Expenditure Plan must demonstrate how the activities in the plan will contribute to the overall economic and ecological recovery of the Gulf Coast, and how each activity that would restore and protect natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands or the economy of the Gulf Coast is based on the best available science.

(e) The State Expenditure Plan must demonstrate that activities described in § 34.201(a) through (g) will be carried out in the Gulf Coast Region, as described in § 34.203(c).

(f) No more than 25 percent of funding under the Spill Impact

Component is available to a Gulf Coast State under this subpart to pay for infrastructure, unless the Governor or the Governor's representative on the Council certifies that:

(1) The ecosystem restoration needs in the state will be addressed by the activities in the proposed plan; and

(2) Additional investment in infrastructure is required to mitigate the impacts of the *Deepwater Horizon* Oil Spill to the ecosystem or economy.

(g) Before being submitted to the Council for approval, a State Expenditure Plan must be available for public review and comment for a minimum of 45 days, in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations.

(h) If the Council disapproves a State Expenditure Plan, the Council must notify the impacted state in writing and consult with the state to address any identified deficiencies with the plan. If the Council fails to approve or take action within 60 days after the date on which the Council receives the plan, the state may obtain expedited judicial review within 90 days in a United States district court located in the state seeking the review.

(i) The Council must publish guidelines explaining when modifications to a State Expenditure Plan require the Council's approval. Material modifications to a State Expenditure Plan are subject to the requirements of paragraphs (b) through (g) of this section.

#### **§ 34.504 Grant administration—Spill Impact Component.**

The Council must publish policies and procedures for administration of the Spill Impact Component grants that are consistent with applicable Federal laws and policies on grants. The Council must also establish and implement a program to monitor compliance with its grant agreements.

#### **§ 34.505 Use of funds—Spill Impact Component.**

An activity may be funded in whole or in part if the applicable requirements of subparts C and F of this part are met.

#### **§ 34.506 Reports—Spill Impact Component.**

Recipients must submit reports as prescribed by the Council or Treasury. In addition, the Council must submit reports as prescribed by Treasury.

#### **§ 34.507 Recordkeeping—Spill Impact Component.**

Recipients must maintain records as prescribed by the Council and make the

records available to the Council, and Treasury, including the Treasury Inspector General. In addition, the Council must make its records concerning the activities of recipients available to Treasury, including the Treasury Inspector General.

#### **§ 34.508 Audits—Spill Impact Component.**

The Council and Treasury, including the Treasury Inspector General, may conduct audits and reviews of a recipient's accounts and activities relating to the Act as any of them deem appropriate.

### **Subpart G—NOAA RESTORE Act Science Program**

#### **§ 34.600 General.**

This subpart describes policies and procedures applicable to the NOAA RESTORE Act Science Program. The program's purpose is to carry out research, observation, and monitoring to support, to the maximum extent practicable, the long-term sustainability of the ecosystem, fish stocks, fish habitat, and the recreational, commercial, and charter fishing industries in the Gulf of Mexico.

#### **§ 34.601 Responsibility for administration—NOAA RESTORE Act Science Program.**

NOAA is responsible for establishing and administering this program, in consultation with the United States Fish and Wildlife Service. NOAA must develop, publish, and apply policies and procedures for the NOAA RESTORE Act Science Program consistent with the Act, this subpart, and Federal laws and policies on grants. NOAA must monitor compliance with its grant agreements, cooperative agreements, contracts, and agreements funded through the Trust Fund. NOAA and the United States Fish and Wildlife Service will consult with the Regional Gulf of Mexico Fishery Management Council and the Gulf States Marine Fisheries Commission in carrying out the program.

#### **§ 34.602 Use of funds and eligible activities—NOAA RESTORE Act Science Program.**

(a) Amounts made available to NOAA may be expended to carry out a program comprised of activities described in section 1604 of the Act. These activities include coordination of science and technology programs and stakeholder engagement, in accordance with section 1604(f) of the Act, as well as the following activities with respect to the Gulf of Mexico:

(1) Marine and estuarine research.

(2) Marine and estuarine ecosystem monitoring and ocean observation.

(3) Data collection and stock assessments.

(4) Pilot programs for fishery independent data and reduction of exploitation of spawning aggregations.

(5) Cooperative research.

(b) NOAA may also expend amounts made available from the Trust Fund for administrative expenses connected with the program. All funds must be expended in compliance with the Act, these regulations, and other applicable law.

#### **§ 34.603 Limitations on activities—NOAA RESTORE Act Science Program.**

None of the Trust Fund amounts may be used for the following activities:

(a) For any existing or planned research led by NOAA, unless agreed to in writing by the grant recipient.

(b) To implement existing regulations or initiate new regulations promulgated or proposed by NOAA.

(c) To develop or approve a new limited access privilege program (as that term is used in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1853(a)]) for any fishery under the jurisdiction of the South Atlantic, Mid-Atlantic, New England, or Gulf of Mexico Fishery Management Councils.

#### **§ 34.604 Limitations on administrative expenses—NOAA RESTORE Act Science Program.**

(a) Of the amounts received by NOAA under the NOAA RESTORE Act Science Program, not more than three percent may be used for administrative expenses.

(b) The three percent limit is applied to the total amount of funds received by NOAA, beginning with the first fiscal year it receives funds through the end of the fourth, or most recent fiscal year, whichever is later.

(c) NOAA may seek reimbursement of administrative expenses incurred after the first deposit into the Trust Fund, to the extent permitted by Federal law. Administrative expenses incurred prior to the first deposit into the Trust Fund are not reimbursable.

#### **§ 34.605 Reports—NOAA RESTORE Act Science Program.**

NOAA must submit reports as prescribed by Treasury.

#### **§ 34.606 Recordkeeping—NOAA RESTORE Act Science Program.**

Recipients and other entities receiving funds under the NOAA RESTORE Act Science Program must maintain records as prescribed by NOAA and make the records available to NOAA.

**§ 34.607 Audits—NOAA RESTORE Act Science Program.**

NOAA and the Treasury Inspector General may conduct audits and reviews of recipient's accounts and activities relating to the Act as either of them deems appropriate.

**Subpart H—Centers of Excellence Research Grants Program****§ 34.700 General.**

This subpart describes the policies and procedures applicable to the Centers of Excellence Research Grants Program. The program's purpose is to establish centers of excellence to conduct research only on the Gulf Coast Region. The funds made available to the Gulf Coast States under this subpart will be in the form of a grant.

**§ 34.701 Responsibility for administration—Centers of Excellence Research Grants Program.**

Treasury is responsible for awarding grants to the Gulf Coast States, which will use the amounts made available to award grants to nongovernmental entities and consortia in the Gulf Coast Region for the establishment of Centers of Excellence. Treasury will develop and apply policies and procedures consistent with this Act and Federal laws and policies on grants. Each Gulf Coast State entity issuing grants must establish and implement a program to monitor compliance with its subaward agreements.

**§ 34.702 Allocation of funds—Centers of Excellence Research Grants Program.**

An equal share of funds will be available to each Gulf Coast State to carry out eligible activities. The duties of a Gulf Coast State will be carried out by the following entities:

- (a) In Alabama, the Alabama Gulf Coast Recovery Council, or such administrative agent as it may designate.
- (b) In Florida, the Florida Institute of Oceanography.
- (c) In Louisiana, the Coastal Protection and Restoration Authority Board of Louisiana, through the Coastal Protection and Restoration Authority of Louisiana.
- (d) In Mississippi, the Mississippi Department of Environmental Quality.
- (e) In Texas, the Office of the Governor or an appointee of the Office of the Governor.

**§ 34.703 Application procedure—Centers of Excellence Research Grants Program.**

Treasury has developed an application process for grants available to the Gulf Coast States under this subpart that is consistent with the Act and Federal laws and policies on grants.

The process includes the following requirements:

(a) Each Gulf Coast State must describe the competitive process that the state will use to select one or more Centers of Excellence. The competitive process must allow nongovernmental entities and consortia in the Gulf Coast Region, including public and private institutions of higher education, to compete. The process must give priority to entities and consortia that demonstrate the ability to establish the broadest cross-section of participants in the grant with interest and expertise in science, technology, and monitoring in the discipline(s) on which the proposal is focused. The process must also guard against conflicts of interest.

(b) Each Gulf Coast State must describe in its application the state rules and policies applying to subawards it will issue under this subpart. At a minimum, these state rules and policies must include the competitive selection process and measures to guard against conflicts of interest.

(c) Each Gulf Coast State must demonstrate in its application that the state rules and policies applying to subawards it will issue under this subpart were published and available for public review and comment for a minimum of 45 days, and that they were approved after consideration of meaningful input from the public, including broad-based participation from individuals, businesses, Indian tribes, and non-profit organizations. These requirements do not apply to state statutes and regulations, or to policies that were in effect prior to August 15, 2014.

(d) Each application must state the amount of funding requested and the purposes for which the funds will be used.

**§ 34.704 Use of funds and eligible activities—Centers of Excellence Research Grants Program.**

(a) A Gulf Coast State receiving funds under this subpart must establish a grant program that complies with the Act and Federal laws and policies on grants.

(b) Gulf Coast States may use funds available under this subpart to award competitive subawards for the establishment of Centers of Excellence that focus on science, technology, and monitoring in at least one of the following disciplines:

(1) Coastal and deltaic sustainability, restoration, and protection, including solutions and technology that allow citizens to live in a safe and sustainable manner in a coastal delta in the Gulf Coast Region.

(2) Coastal fisheries and wildlife ecosystem research and monitoring in the Gulf Coast Region.

(3) Offshore energy development, including research and technology to improve the sustainable and safe development of energy resources in the Gulf of Mexico.

(4) Sustainable and resilient growth and economic and commercial development in the Gulf Coast Region.

(5) Comprehensive observation, monitoring, and mapping of the Gulf of Mexico.

**§ 34.705 Ineligible activities—Centers of Excellence Research Grants Program.**

Any activity that is not authorized under the provisions of § 34.704 is ineligible for funding under this subpart.

**§ 34.706 Reports—Centers of Excellence Research Grants Program.**

Each Gulf Coast State entity must submit the following reports:

(a) An annual report to the Council in a form prescribed by the Council that includes information on subrecipients, subaward amounts, disciplines addressed, and any other information required by the Council. When the subrecipient is a consortium, the annual report must also identify the consortium members. This information will be included in the Council's annual report to Congress.

(b) Reports as prescribed by Treasury.

**§ 34.707 Recordkeeping—Centers of Excellence Research Grants Program.**

Recipients must maintain records as prescribed by Treasury and make the records available to Treasury, including the Treasury Inspector General.

**§ 34.708 Audits—Centers of Excellence Research Grants Program.**

Treasury, including the Treasury Inspector General, may conduct audits and reviews of each recipient's accounts and activities relating to the Act as deemed appropriate by Treasury.

**Subpart I—Agreements****§ 34.800 General.**

This subpart describes procedures applicable to grant agreements used by Treasury, the Council (including Federal agencies carrying out responsibilities for the Council), NOAA, Gulf Coast States, coastal political subdivisions, and coastal zone parishes in making awards under subparts D, E, F, G, and H of this part. It also describes Treasury's authority to inspect records and the Treasury Inspector General's authority under the Act.

**§ 34.801 Grant agreements.**

The grant agreements used must conform to the Act and Federal laws and policies on grants, including audit requirements.

**§ 34.802 Certifications.**

At a minimum, grant applications and agreements for the Direct Component, Comprehensive Plan Component, and Spill Impact Component must contain the following certifications. The certification must be signed by an authorized senior official of the entity receiving grant funds who can legally bind the organization or entity, and who has oversight for the administration and use of the funds in question. The certification in paragraph (c) of this section does not apply to planning assistance funds for the preparation and amendment of the Multiyear Implementation Plan.

(a) I certify that each activity funded under this Agreement has been designed to plan for or undertake activities to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, or economy of the Gulf Coast Region.

(b) I certify that each activity funded under this Agreement is designed to carry out one or more of the eligible activities for this component.

(c) I certify that each activity funded under this Agreement was part of a plan made available for public review and comment in a manner calculated to obtain broad-based participation from individuals, businesses, Indian tribes, and nonprofit organizations, and that the activity was selected after consideration of meaningful input from the public, as described in the grant application.

(d) I certify that each activity funded under this Agreement that protects or restores natural resources is based on the best available science, as that term is defined in 31 CFR part 34.

(e) I certify that this recipient has procedures in place for procuring property and services under this award that are consistent with the procurement standards applying to Federal grants. This recipient agrees that it will not request funds under this award for any contract unless this certification remains true and accurate.

(f) I certify that a conflict of interest policy is in effect and covering each activity funded under this Agreement.

(g) I make each of these certifications based on my personal knowledge and belief after reasonable and diligent inquiry, and I affirm that this recipient maintains written documentation sufficient to support each certification

made above, and that this recipient's compliance with each of these certifications is a condition of this recipient's initial and continuing receipt and use of the funds provided under this Agreement.

**§ 34.803 Conditions.**

At a minimum, each grant agreement under subparts D, E, F, G, and H of this part must contain the following conditions:

(a) The recipient must immediately report any indication of fraud, waste, abuse, or potentially criminal activity pertaining to grant funds to Treasury and the Treasury Inspector General.

(b) The recipient must maintain detailed records sufficient to account for the receipt, obligation, and expenditure of grant funds. The recipient must track program income.

(c) Prior to disbursing funds to a subrecipient, the recipient must execute a legally binding written agreement with the entity receiving the subaward. The written agreement will extend all the applicable program requirements to the subrecipient.

(d) The recipient must use the funds only for the purposes identified in the agreement.

(e) The recipient must report at the conclusion of the grant period, or other period specified by the Federal agency administering the grant, on the use of funds pursuant to the agreement.

(f) Trust Fund amounts may only be used to acquire land or interests in land by purchase, exchange, or donation from a willing seller.

(g) None of the Trust Fund amounts may be used to acquire land in fee title by the Federal Government unless the land is acquired by exchange or donation or the acquisition is necessary for the restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast Region and has the concurrence of the Governor of the state in which the acquisition will take place.

**§ 34.804 Noncompliance.**

(a) If Treasury determines that a Gulf Coast State, coastal political subdivision, or coastal zone parish has expended funds received under the Direct Component, Comprehensive Plan Component, or Spill Impact Component on an ineligible activity, Treasury will make no additional funds available to that recipient from any part of the Trust Fund until the recipient has deposited in the Trust Fund an amount equal to the amount expended for an ineligible activity, or Treasury has authorized the recipient to expend an equal amount

from the recipient's own funds for an activity that meets the requirements of the Act.

(b) If Treasury determines that a Gulf Coast State, coastal political subdivision, or coastal zone parish has materially violated a grant agreement under the Direct Component, Comprehensive Plan Component, or Spill Impact Component, Treasury will make no additional funds available to that recipient from any part of the Trust Fund until the recipient corrects the violation.

(c) As a condition of receiving funds, recipients and subrecipients shall make available their records and personnel to Treasury in order to carry out the purposes of this section.

**§ 34.805 Treasury Inspector General.**

In addition to other authorities available under the Act, the Office of the Inspector General of the Department of the Treasury is authorized to conduct, supervise, and coordinate audits and investigations of activities funded through grants under the Act.

**David A. Lebryk,**

*Fiscal Assistant Secretary.*

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**DEPARTMENT OF HOMELAND SECURITY**
**Coast Guard**
**33 CFR Part 117**

[Docket No. USCG-2015-1066]

**Drawbridge Operation Regulation; Hoquiam River, Hoquiam, WA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Simpson Avenue Bridge across the Hoquiam River, mile 0.5, at Hoquiam, WA. The deviation is necessary to accommodate Washington State Department of Transportation's (WSDOT) extensive maintenance and restoration efforts on this bridge. This deviation allows WSDOT to open one leaf of the double leaf bascule bridge when at least two hours of notice is given. The vertical clearance will be reduced to approximately 25 feet at mean high tide, and the horizontal clearance will be reduced to 52 feet.